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Supreme Court, U.S.
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NUMBER

SUPREME COURT OF THE UNITED STATES

OCTOBER, 1991

DUANE COPLIN AND PATRICIA COPLIN,
Petitioners

vs.

UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Was the disclosure of income tax information by an Internal Revenue Service agent serving a number of levies, lawful without a showing of necessity and because the same information had previously been disclosed in a Notice of Lien?

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PETITION FOR A WRIT OF CERTIORARI TO THE
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TO THE SUPREME COURT OF THE UNITED STATES:

Petitioners, Duane Coplin and Patricia Coplin, present this, their Petition for a Writ of Certiorari and state:

I PARTIES TO THE PROCEEDING

All parties to this action are listed in the caption. There are no parent or affiliated companies, nor any corporation or other entity that has a financial interest in the outcome as shown by the disclosure filed in the United States Court of Appeals for the Sixth Circuit which states as follows:

> Pursuant to Sixth Circuit Rule 25, Duane Coplin and Patricia Coplin, by and through their attorney, Carl L. Reagh, make the following disclosures:
>
> 1. Are said parties a subsidiary or affiliate of a publicly owned corporation? NO

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? NO

Dated this 6th day of June, 1991.

s/Carl L. Reagh
Carl L. Reagh
Attorney for Plaintiffs/Appellants

II Reports Of Opinions

1. Opinion from the United States District Court for the Western District of Michigan finding in favor of the Defendant dated January 3, 1991.

2. Opinion from the United States Court of Appeals for the Sixth Circuit affirming the District Court's final judgment dated December 17, 1991. (Unpublished)

3. Order from the United States Court of Appeals for the Sixth Circuit denying the Petition for Rehearing dated February 13, 1992.

III Grounds For Jurisdiction

This Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit is filed pursuant to Rule 13 of the Rules of the Supreme Court of the United States.

A final judgment was entered by the United States District Court for the Western District of Michigan on January 18, 1991.

This Judgment was affirmed by the United States

Court of Appeals for the Sixth Circuit on December 17, 1991.

A Petition for Rehearing was denied by the United States Court of Appeals for the Sixth Circuit on February 13, 1992.

Petitioners believe that 28 U.S.C. Sec. 1254 (c) confers jurisdiction to review the judgment in question by a writ of certiorari.

IV STATUTES INVOLVED

The following statutes are involved:

"Sec. 6103. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION.

(Sec. 6103 (a))

(a) GENERAL RULE. — Returns and return information shall be confidential, and except as authorized by this title —

> (1) No officer or employee of the United States,
>
> (2) No officer or employee of any state, any local child support enforcement agency, or any local agency administering a program listed in subsection (1) (7) (D) who has or had access to returns or return information under this section, and
>
> (3) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (e) (1) (D) (iii), paragraph (2) or (4) of subsection (m), or subsection (n),

shall disclose any return or return information obtained

by him in any manner in connection with his service as such officer or an employee or otherwise or under provisions of this section. For purposes of this subsection, the term "officer or employee" includes a former officer or employee." 26 U.S.C. 6103 (a)

(Sec. 6103 (k))

"(k) DISCLOSURE OF CERTAIN RETURNS AND RETURN INFORMATION FOR TAX ADMINISTRATION PURPOSES —

(2) DISCLOSURE OF AMOUNT OF OUTSTANDING LIEN. — If a notice of lien has been filed pursuant to Section 6323 (f), the amount of the outstanding obligation secured by such lien may be disclosed to any person who furnishes satisfactory written evidence that he has a right in the property subject to such lien or intends to obtain a right in such property. 26 U.S.C. Sec. 6103 (k) (2).

(6) DISCLOSURE BY INTERNAL REVENUE OFFICERS AND EMPLOYEES FOR INVESTIGATIVE PURPOSES. — An internal revenue officer or employee may, in connection with his official duties relating to any audit, collection activity, or civil or criminal tax investigation or any other offense under the internal revenue laws, disclose return information to the extent that such disclosure is necessary in obtaining information, which is not otherwise reasonably available, with respect to the enforcement of any other provision of this title. Such disclosures shall be made only in such situations and under such conditions as the Secretary may prescribe by regulation." 26 U.S.C. Sec. 6103 (k) (6).

V REGULATIONS INVOLVED

The following Treasury Regulations are involved:

"In connection with the performance of official duties relating to any examination, collection activity, civil or

criminal investigation, enforcement activity, or other offense under the internal revenue laws, — an officer or employee of the Internal Revenue Service — is authorized to disclose taxpayer identity information (as defined in section 6103 (b) (6)), — where necessary in order to properly accomplish any activity described in subparagraph (6) of paragraph (b) of this section. Disclosure of taxpayer identity information to a person other than the taxpayer to whom such taxpayer identity information relates or such taxpayer's legal representative for the purpose of — properly accomplishing such activities as authorized by this paragraph should be made, however, only — if such activities cannot otherwise properly be accomplished without making such disclosure." 26 C.F.R. Sec. 301.6103 (k) (6) –1 (a).

"In connection with the performance of official duties relating to any examination, collection activity, civil or criminal investigation, enforcement activity, or other offense under the internal revenue laws, an officer or employee of the Service — is authorized to disclose return information (as defined in Section 6103 (b) (2)) in order to obtain necessary information relating to the following —

★ ★ ★ ★ ★ ★ ★ ★ ★ ★

(6) To establish or verify the financial status or condition of the taxpayer against whom collection activity is or may be directed, to locate assets in which the taxpayer has an interest, to ascertain the amount of any liability described in paragraph (3) of this paragraph to be collected or otherwise to apply the provisions of the Code relating to establishing liens against such assets, or levy on, or sale of, the assets to satisfy such liability, or

★ ★ ★ ★ ★ ★ ★ ★ ★ ★

Disclosure of return information to a person other than the taxpayer to whom such return information relates or such taxpayer's legal representative for the purpose of — properly accomplishing any activity described in subparagraph (6) of this paragraph, should be made, however, only — if the activities described in subparagraph (6) of this paragraph cannot otherwise be properly accomplished without making such disclosure." 26 C.F.R. Sec. 301.6103 (k) (6) –1 (b).

VI Statement Of The Case

At the time this action arose the Petitioner, Duane Coplin, worked for Coplin and Associates, Inc. as a self employed consultant, not as an employee. Petitioner, Patricia Coplin, was unemployed.

The Internal Revenue Service had filed several Notices of Lien against Petitioner, Duane Coplin, for various preparer penalties, and against Petitioners, Duane Coplin and Patricia Coplin, for their personal income taxes.

In January of 1989, an agent from the Internal Revenue Service obtained, from the audit division of the Internal Revenue Service, a list of taxpayers whose 1986 returns had been prepared by Petitioner Duane Coplin or by Coplin Business Service, Inc., a corporation owned by Duane Coplin that had, in the interim, filed bankruptcy and gone out of business. The agent made no determination as to whether the preparer was the Petitioner, Duane Coplin, or the corporation. Duane Coplin testified that he had not prepared income tax returns for others as an individual for many years but had prepared them only on behalf of various corporations.

On January 27, 1989, Patricia Wilker, of the Internal Revenue Service, prepared 374 Notice of Levy forms and

mailed them to the list of names received from the audit division of the Internal Revenue Service. These levies pertained to the claimed liability of Petitioner, Duane Coplin.

On February 10, 1989, Patricia Wilker sent another 374 Notice of Levy forms to the same individuals pertaining to the claimed liability of Duane Coplin and Patricia Coplin.

On March 22, 1989 Petitioners filed an action in the United States District Court for the Western District of Michigan, Southern Division, claiming that the disclosures were in violation of the confidentiality section of the Internal Revenue Code as they were not necessary. (p. A-4)

On September 25, 1991, a trial was held, without a jury, in the United States District Court for the Western District of Michigan, Southern Division. On January 3, 1991, the Court filed an Opinion (p. A-5) and an Order (p. A-14) finding in favor of the Defendant, United States of America.

Petitioners filed a Notice of Appeal to the United States Court of Appeals for the Sixth Circuit. On December 17, 1991 the Court of Appeals issued an opinion affirming the District Court. (p. A-16)

Petitioners filed a Petition for Rehearing which was denied by the Court of Appeals on February 13, 1992. (p. A-28)

Petitioners now file this Petition for a Writ of Certiorari to the United States District Court for the Sixth Circuit.Court for the Sixth Circuit.

VII ORIGINAL JURISDICTION

The United States District Court for the Western District of Michigan, Southern Division, had jurisdiction over this case under Section 1340 of Title 28 of the United States Code and Section 7402 of Title 28 of the United States Code.

VIII ARGUMENT

The Internal Revenue Code provides that returns and return information shall be confidential and that no officer or employee of the United States shall disclose any return or return information. 26 U.S.C. Sec. 6103 (a)

Certain exceptions to the rule are listed and Section 6103 (k) pertains to the activities of Internal Revenue Service officers or employees. One subsection states:

"(2) DISCLOSURE OF AMOUNT OF OUTSTANDING LIEN. — If a notice of lien has been filed pursuant to section 6323 (f), the amount of the outstanding obligation secured by such lien may be disclosed to any person who furnishes satisfactory written evidence that he has a right in the property subject to such lien or intends to obtain a right in such property." 26 U.S.C. Sec. 6103 (k) (2)

Thus, the disclosure of the amount of the outstanding obligation may not be disclosed in the Notice of Lien but only may be disclosed to a person " — who furnishes satisfactory written evidence that he has a right in the property subject to such lien or that he intends to obtain a right in such property."

Any disclosure of the amount of the outstanding obligation in the Notice of Lien itself would not be included in the exception and would, therefore, be a violation of the rule providing that such information is confidential and may not be disclosed.

The United States District Court for the Western District of Michigan, Southern Division, held:

"The information disclosed by Wilker is substantially the same information disclosed on the lien filed in the Eaton and Ingham County Register of Deeds. It is clear that information disclosed by the establishment of a lien is not wrongfully disclosed information. See Maisano v. United States, 908 F2nd 408, 410 (9th Cir. 1990); Flippo v. United States, 670 F. Supp. 638, 641 (W.D.N.C., 1987), aff'd 849 F2nd 604, (4th Cir., 1988) Disclosure of the same information in an attempt to satisfy the lien is, likewise, not a wrongful disclosure." (p. A-13)

The United States Court of Appeals for the Sixth Circuit held:

"We agree with the district court's holding that 'it is clear that information disclosed by the establishment of a lien is not wrongfully disclosed information' and that 'disclosure of the same information in an attempt to satisfy the lien is, likewise, not a wrongful disclosure.'" (p. A-25)

After referring to the cases cited by the District Court the Court of Appeals went on to say:

"Such disclosure through levy notices is no violation of taxpayers' non-disclosure rights because the information has already been publicly disclosed in the lien itself." (p. A-25)

In the United States Court of Appeals for the Sixth Circuit the petitioners pointed out that the case law cited by the District Court only established that the filing of the lien was not an unlawful disclosure, but did not address the issue of the contents that may legitimately be disclosed. The Court of Appeals recognized this argument

without comment. The Internal Revenue Code clearly states that the amount of the outstanding obligation cannot be contained in the Notice of Lien for the whole world to see because the amount of the outstanding obligation can only be disclosed in the stated situations. 26 U.S.C. Sec. 6103 (k) (2).

However, the Court of Appeals then went on to say:

"They claim that the notice of levy wrongfully disclosed the amount of the taxpayers' outstanding obligation, in violation of 26 U.S.C. Sec. 6103 (k) (2), which states:

'Disclosure of Amount of Outstanding Lien — If a notice of lien has been filed pursuant to Section 6323 (f), the amount of the outstanding obligation secured by such lien may be disclosed to any person who furnishes satisfactory written evidence that he has a right in the property subject to such lien or intends to obtain a right in such property.'

The taxpayers claim that the notices of levy wrongfully disclosed the amount of their outstanding obligation for everyone to see because they did not require those third parties to show any interest in the property or intent to obtain an interest in the property." (p. A-26)

This was not the Petitioners' claim. In the brief filed in the Court of Appeals Petitioners stated that:

"Pursuant to Section 6103 (k) (2) such information was not lawful on the Notice of Lien and therefore, could not be the basis for making a Notice of Levy a lawful disclosure of income tax information."

Further, in the brief to the Court of Appeals the Petitioners argued that the statutory section " —provides a penalty for each disclosure without regard to how many

times the defendant might disclose such information. It does not provide for a reduction or elimination of the penalty if the information has previously been disclosed nor does it make an exception if the information could have been disclosed in some other manner or for some other reason."

The disclosure of the amount of the outstanding obligation is a wrongful disclosure under Section 6103 (k) (2) but, even if it were not, there would be no exception under Section 7431 for the fact that the information could have been disclosed in the filing of a Notice of Lien. Petitioners, in their brief in the Court of Appeals, went on to say:

"The Court stated 'Disclosure of the same information in an attempt to satisfy the lien is, likewise, not a wrongful disclosure.' However, if the disclosure in the Notice of Lien was unlawful then, apparently, the Court would have found that the disclosure in the Notice of Levy was also unlawful."

When the Court of Appeals stated that " — the taxpayers claim that the notices of levy wrongfully disclosed the amount of their outstanding obligaiton for everyone to see — " they did not understand the Petitioners' claim.

In the District Court Petitioners had claimed the disclosures in the Notice of Levy were unlawful because the Notice of Levy was not necessary. The District Court found that the disclosures in the Notices of Levy were not wrongful disclosures as the contained "— substantially the same information as contained in the liens. —" (p. A-13)

Therefore, in the brief in the Court of Appeals the Petitioners pointed out that the disclosures made in the Notices of Lien were unlawful and could not be used as a basis for further disclosures.

Because the Court of Appeals misunderstood the Petitioners' argument and believed that Petitioners were arguing that the provisions of Section 6103 (k) (2) would also apply to the exclusion set forth in Section 6103 (k) (6) they missed the important part of the Petitioners' argument.

Because the District Court had based the decision on the fact that the information had already been disclosed in the Notices of Lien and therefore, could not be an unlawful disclosure when disclosed in a Notice of Levy, the Petitioners felt compelled to point out:

(1) that the release of the amount of the outstanding obligation in the Notice of Lien was a violation of 26 U.S.C. Sec. 6103 (k) (2).

(2) that such unlawful disclosure should not be used to make other disclosures lawful.

(3) that the return and return information are confidential and can only be disclosed in certain specified exceptions. Section 6103 (k) (2) and 6103 (k) (6) are not dependent upon or interrelated in any way.

The crux of the Petitioners' argument in the United States District Court for the Western District of Michigan and in the United States Court of Appeals for the Sixth Circuit was that the Internal Revenue Service employee served Three Hundred Seventy Four (374) Notices of Levy on two seperate occasions when she knew or should have known that there was no reason for these people to owe any money to the Petitioners. Petitioners believe that the disclosure made in these Notices of Levy were not necessary are required by 26 U.S.C. Sec. 6103 (k) (6) nor were they designed to accomplish any activity under the Internal Revenue Code as required by 26 C.F.R. Sec. 301. 6103 (k) (6) –1 (b)

The Internal Revenue Service employee, in this case, obtained a list of names, from the audit division of the Internal Revenue Service, of persons whose income tax returns, for the tax year, 1986, had been prepared by Petitioner Duane Coplin or by Coplin Business Service, Inc.. She made no attempt to determine whether any of the returns had been prepared by the Petitioner, Duane Coplin. Duane Coplin testified that he had not prepared income tax returns for others, as an individual, for many years.

Coplin Business Service, Inc. filed bankruptcy and went out of business. The Internal Revenue Service employee knew that there were no accounts receivable and that the employees of Coplin Business Service, Inc. had purchased the business and were operating under a new corporation. Neither of the Petitioners were owners of the new corporation nor were they on the Board of Directors or any other responsible corporate position. Neither of the Petitioners were on the payroll of the new corporation.

On January 27, 1989, the Internal Revenue Service employee mailed Three Hundred Seventy Four (374) Notices of Levy to the names that appeared on the list of customers of the defunct Coplin Business Service, Inc.. This Levy pertained to the liability of the Petitioner, Duane Coplin.

Then, without waiting for the results of the first set of levies, the Internal Revenue Sevice employee mailed out another Three Hundred Seventy Four (374) Notices of Levy to the same persons. The second set of Notices of Levy pertained to the liability of Petitioners, Duane Coplin and Patricia Coplin.

The Petitioners believe that when the legislature used the words "— may — disclose return information to the

extent that such disclosure is necessary — ." 26 U.S.C. Sec. 6103 (k) (6) and when the Secretary of the Treasury promulgated a regulation which stated "— where necessary in order to properly accomplish any activity described in subparagraph (6) of paragraph (b) of this section — ." 26 C.F.R. Sec. 301.6103 (k) (6) –1 (b) that it was intended to impose some restrictions upon the Internal Revenue Service employess and to prevent the indiscriminate disclosure of return information.

When the Internal Revenue Service employee ordered the list of names of persons whose income tax returns had been prepared by Duane Coplin or Coplin Business Service, Inc. she made no attempt to differentiate between those returns prepared by the Petitioner, Duane Coplin and those prepared by the defunct Coplin Business Service, Inc. that had no accounts receivables. After she got the list she made no attempt to find out whether any of the returns had been prepared by the Petitioner, Duane Coplin.

Petitioners submit that the service of the first set of Notices of Levy was not necessary because the Respondent, United States of America, through the Internal Revenue Service, had the information in its possession that would have shown that Duane Coplin had not prepared income tax returns for any of the people on the list.

The mailing of the Three Hundred Seventy Four (374) Notices of Levy containing information pertaining to the Petitioners' income tax return was a disclosure. Because the respondent had the information in its files that would show that none of these people had any reason to owe the Petitioners any money it was not a "necessary" disclosure as required to fit into the exception of 26 U.S.C. Sec. 6103 (k) (6). Nor was it designed to "— properly accomplish any activity described — " as required by 26

C.F.R. m Sec. 301. 6103 (k) (6) –1 (b). Therefore, the disclosure was unlawful.

However, even if the first set of Notices of Levy were not unlawful disclosures of income tax information, most certainly the second set of Notices of Levy would be unlawful.

The first set of Notices of Levy pertained to the claimed liability of the Petitioner, Duane Coplin, and contained information pertaining to his income tax return. The second set of Notices of Levy pertained to the claimed liability of the Petitioners, Duane Coplin and Patricia Coplin and contained information pertaining to both of their income taxes. The first set of levies were mailed on January 27, 1989 and the second set was mailed just fourteen (14) days later on February 10, 1989.

If any of these people who received the first set of Notices of Levy had owed any money to the Petitioner, Duane Coplin, the money would have been seized by the first levy. Therefore, the second set of levies, sent to the same people, could not possibly have served any purpose under the Internal Revenue Code. Nor could it, under any circumstances, be considered "necessary". However, in the second set of levies the income tax information pertaining to Patricia Coplin was disclosed.

If the section of the Internal Revenue Code providing that income tax return and return information shall be confidential is to mean anything at all it must be applied to this set of facts.

The District Court did not consider whether the disclosure was or was not necessary but only ruled that the Internal Revenue Service employee was attempting to levy on some assets and therefore, it was not a wrongful disclosure.

The Court of Appeals correctly stated the law and then stated " — Here, the government had exhausted all other means of obtaining information and nothing else was reasonably available." This did not amount to a finding that the activities in question were necessary or that they were designed to accomplish any activity under the Internal Revenue Code.

Petitioners believe that neither the District Court nor the Court of Appeals considered whether or not the disclosure was necessary.

The District Court stated that " — it need not reach the government's alternative theory that the 'good faith' exception of Section 7431 should apply." (p. A-12)

However, the Court of Appeals found " — we hold that because Wilker reasonably believed she was permitted by Sec. 6103 to disclose the lien information in order to collect delinquent taxes no liability exists." (p. A-27)

The Internal Revenue Code provides that:

"(b) NO LIABILITY FOR GOOD FAITH BUT ERRONEOUS INTERPRETATION. — No liability shall arise under this section with respect to any disclosure which results from a good faith, but erroneous, interpretation of Section 6103." 26 U.S.C. 7431 (b)

The Petitioners alleged in their Complaint that the Internal Revenue Service employee knew that " — the people she was mailing them to were customers of Coplin and Baughman, Inc. and would not have any reason to owe any money to Duane Coplin or Patricia Coplin." Petitioners contend that the facts in this case establish that there was no reason to believe that the levies would accomplish any purpose under the Internal Revenue Code and that the disclosures were not "necessary".

Because the allegation in the Complaint was that the disclosures were deliberate and because Petitioners believe that the proofs support that claim, Sec. 7431 (b) would have no application as it applies to only a good faith but erroneous interpretation of the statute.

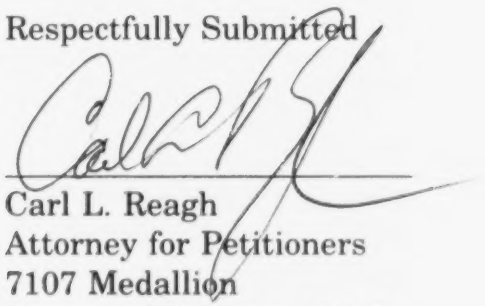
CONCLUSION

It is the Petitioners' contention that the United States District Court for the Western District of Michigan and the United States Court of Appeals for the Sixth Circuit erred in justifying the disclosure of income tax information in a Notice of Levy because the same information had previously been disclosed in a Notice of Lien without ruling on the validity of disclosure in the Notice of Lien. By so doing, both the District Court and the Court of Appeals avoided ruling on the crucial issue as to whether or not the disclosures were within the exception to the confidentiality provision of the Internal Revenue Code.

The Petitioners believe that the interpretation of the confidentiality section of the Internal Revenue Code and the exceptions thereto is an important question of federal law that has not been decided by this Court but should be decided to determine the control, if any, that section imposes on the Internal Revenue Service in their use of a Notice of Levy.

WHEREFORE, Petitioners request that this Court grant a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

Respectfully Submitted



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Dated: Lansing, Michigan
May 12, 1992

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SUPREME COURT OF THE UNITED STATES

OCTOBER, 1991

DUANE COPLIN AND PATRICIA COPLIN,
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vs.

UNITED STATES OF AMERICA,
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PETITION FOR WRIT OF CERTIORARI
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APPENDIX

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

DUANE COPLIN and PATRICIA COPLIN, Plaintiffs	COMPLAINT
	CASE NO. L89-30027CA
vs.	HON. BENJAMIN F. GIBSON U.S. DISTRICT JUDGE
UNITED STATES OF AMERICA and PATRICIA WILKER Defendants	

NOW COME the Plaintiffs, DUANE COPLIN and PATRICIA COPLIN, by Carl L. Reagh, their attorney, and for Complaint against the Defendants, say as follows:

COUNT ONE — QUIET TITLE

1. Plaintiffs are residents of the County of Eaton, State of Michigan.

2. The Defendant, United States of America, claims a lien against property belonging to the Plaintiffs in that they have filed a document setting forth an alleged lien in the Eaton County government offices.

3. Plaintiffs bring this action under Section 2410, Title 28, United States Code because such alleged lien creates a defect in the title to property lawfully owned by the Plaintiffs.

4. Such alleged lien is invalid because no lawful and proper assessment has ever been made against these Plaintiffs as required by the Internal Revenue Code, Section 6203.

5. Such alleged lien is invalid because no legal and proper demand has been made against these Plaintiffs as required by the Internal Revenue Code, Section 6303 (a).

6. Plaintiffs have a superior interest in the property the alleged lien has been filed against over and above any claimed interest of the United States of America.

WHEREFORE, The Plaintiffs respectfully request that this Court:

A. Enter an Order declaring that the alleged lien filed in the Eaton County government offices is invalid.

B. Enter an Order declaring that the Plaintiffs hold title to the property affected by the alleged lien free and clear of any claim by the United States of America.

C. Enter an award of costs and attorney fees in favor of the Plaintiffs and against the Defendants.

COUNT TWO — UNLAWFUL DISCLOSURE

1. Plaintiffs are residents of the County of Eaton, State of Michigan.

2. Defendant, Patricia Wilker, is employed as a Revenue Officer by the Department of the Treasury — Internal Revenue Service in the Lansing, Michigan office of the Internal Revenue Service in Lansing, Michigan in the County of Ingham.

3. Plaintiff, Duane Coplin, is employed by Coplin and Baughman, Inc. as a consultant in the offices of Coplin and Baughman in the city of Eaton Rapids, Eaton County, Michigan. He is not and never has been self employed as an Income Tax Preparer.

4. Plaintiff, Patricia Coplin, is not and never has been employed by Coplin and Baughman, Inc., is not and never has been an Income Tax Preparer and is not and never has been self-employed.

5. On or about February 10, 1989, Patricia Wilker did prepare hundreds of a document entitled "Notice of Levy" and mailed them to all of the customers of Duane Coplin's employer, Coplin and Baughman, Inc.

6. Such "Notice of Levy" contained Duane Coplin's name and Patricia Coplin's name, contained their addresses, social security numbers and details of alleged "unpaid Balance of Assessment" and "Statutory Additions" concerning "kind of tax – 1040" for the years ending 12-31-78 and 12-31-81.

7. When Patricia Wilker mailed the "Notice of Levy" she knew that the people she was mailing them to were customers of Coplin and Baughman, Inc. and would not have any reason to owe money to Duane Coplin or Patricia Coplin.

8. The Plaintiffs do not know how many of the form "Notice of Levy" were mailed out but, on information and belief. state that the number is in excess of Four Hundred Fifty (450).

9. On or about January 27, 1989, Patricia Wilker, did prepare hundreds of a document entitled "Notice of Levy" and mailed them to all of the customers of Duane Coplin's employer, Coplin and Baughman, Inc.

10. Such "Notice of Levy" contained Duane Coplin's name, address, social security number and details of alleged unpaid "Balance of Assessment" and "Statutory Additions" involving alleged penalties for the "Tax Period Ended — 12-31-79, 12-31-79, 12-31-81, 12-31-81, 12-31-82 and 6-30-86".

11. When Patricia Wilker mailed the "Notice of Levy" she knew that the people that she was mailing them to were customers of Coplin and Baughman, Inc. and would not have any reason to owe Duane Coplin and money.

12. The Plaintiff does not know how many of the "Notice of Levy" were mailed but, on information and belief, state that the number is in excess of Four Hundred Fifty (450).

13. Such mailing of the "Notice of Levy" to persons who were not associated with the Plaintiff constituted a violation of the confidentiality of return and return information as prescribed by the Internal Revenue Code, Section 6103 (a).

WHEREFORE, Plaintiffs pray that this Court enter a Judgment against the Defendants and in favor of the Plaintiffs in an amount pursuant to the provisions of the Internal Revenue Code.

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Dated: Lansing, Michigan
March 22, 1989

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DUANE E. COPLIN and PATRICIA A. COPLIN, Plaintiffs,	COMPLAINT
	File No. L89-30027 CA
v.	Hon. Benjamin F. Gibson
UNITED STATES OF AMERICA, Defendant.	**OPINION**

Plaintiffs Duane E. Coplin and Patricia A. Coplin filed the present action against defendant United States of America alleging that unlawful liens were entered against plaintiffs' property under Title 28 United States Code Section 2410 and alleging wrongful disclosure of federal income tax return information under Title 26 United States Code Section 6103. They seek a declaratory judgment by this Court that the liens filed by the Internal Revenue Service ("IRS") in Eaton County, Michigan, are invalid because no proper assessment has ever been made against plaintiffs as required by Internal Revenue Code (the "Code") Section 6203, 26 U.S.C. § 6203. Plaintiffs also seek damages for the allegedly wrongful disclosure of federal income tax return information made by IRS agent Patricia Wilker. Following a bench trial held on September 25, 1990, and pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

I. Validity of Liens

At the time plaintiffs filed this lawsuit, the IRS had made nine different assessments against one or both of the plaintiffs. These assessments went unpaid. The IRS claimed liens against both plaintiffs with respect to these unpaid assessments as follows:

1. Three liens for unpaid assessments against both plaintiffs for federal income taxes for the years 1978, 1979, and 1981.

2. Two liens for unpaid assessments against plaintiff Duane Coplin for penalties imposed against him pursuant to Title 26 United States Code Section 6672(a) as a person responsible for taxes withheld from the wages of the employees of Coplin Business Services, Inc. (i.e., for "responsible person penalties").

3. Four liens for unpaid assessments against plaintiff Duane Coplin for penalties imposed against him pursuant to Title 26 United States Code Section 6694 as a tax return preparer (i.e., for "preparer penalties").

At the time the IRS made the assessments against plaintiffs, it mailed notice of the assessments and demands for payment to the plaintiffs. The fact that notices were mailed was established at trial through the testimony of Bonnie Dobson, a "Service Center Clerk Branch Revenue Officer" at the IRS service center in Cincinnati, Ohio. She testified that she was familiar with the procedures of the IRS and that the plaintiffs' "Individual Master File Transcript" ("IMFT") indicated that notices and demands for

payment were mailed at the time the assessments were made. An IMFT is a regularly maintained record of the IRS of all activity undertaken by the IRS against a taxpayer. The IMFT for plaintiffs indicates that assessments were made and notices of assessment and demands for payment were mailed to plaintiffs' last known address on August 11, 1983, regarding the 1979 income tax assessment and on October 11, 1983, regarding the 1981 income tax assessment. On February 18, 1985, and September 30, 1985, assessments for return preparer penalties were made against Duane Coplin and notices and demands for payment of the assessments were mailed to his last known address. On September 3, 1987, the IRS assessed a responsible person penalty against Duane Coplin and mailed notice of the assessment and demand for payment to his last known address. Although plaintiffs contend that they never received any of the notices of assessment and demands for payment mailed by the IRS, Bonnie Dobson's testimony and the IMFT record establish that notices were mailed.

Moreover, there is substantial documentary evidence that the notices and demands for payment were properly mailed to plaintiffs' last known address. By letters dated November 13, 1987, and November 30, 1987, the IRS mailed notice of the assessment of a $9,848.87 responsible person penalty to Duane Coplin. He acknowledged delivery of the notice by signing certified mail receipts on November 21, 1987, and December 2, 1987, respectively. On at least one occasion the IRS mailed a letter to Duane Coplin by certified mail, but he never accepted delivery of the letter. The letter was returned to the IRS and was opened at trial. It contained a notice of an assessment for a responsible person penalty. Plaintiffs also received a final "Notice of Intention to Levy" dated September 15,1988. This notice listed assessments for unpaid

income tax for the years 1978, 1979, and 1981. It also listed assessments for responsible person penalties for the 1981, 1982, and 1986 tax years. The notice informed plaintiffs of the IRS' intention to levy their property and assets if the assessments were not satisfied. Taken in total, the documentary evidence clearly substantiates the IMFT record that notices were in fact mailed to plaintiffs.

Notice of the tax liens against both plaintiffs for unpaid assessments of income taxes were filed in the Eaton County Register of Deeds on December 28, 1987. On April 17, 1989, notice of the tax liens against both plaintiffs for unpaid assessments of income tax and against Duane Coplin for unpaid assessments of responsible person penalties were filed in the Eaton County Register of Deeds. On September 29, 1989, notice of a tax lien against Duane Coplin for unpaid assessments was filed in the Eaton County Register of Deeds. Notice of the tax liens against both plaintiffs for unpaid income taxes were also filed in the Ingham County Register of Deeds on January 13, 1983, and April 17, 1989.

II. Disclosure of Income Tax Return Information

Plaintiff Duane Coplin has been in the business of preparing income tax returns for the past twenty years. He presently makes his living by preparing federal individual income tax returns on behalf of Coplin & Associates (formerly known as Coplin & Baughman, Inc.). Coplin & Associates is a corporation run by Duane Coplin's son. At trial Duane Coplin asserted that he is not an employee of Coplin & Associates, but he works for that company as a consultant, or independent contractor, and so technically he is self-employed. Coplin & Baughman was the successor to Coplin Business Services, Inc. ("CBS"), a corporation which was owned and controlled by plaintiffs.

The assessment against Duane Coplin for responsible person penalties arose out of his alleged failure to withhold taxes from the wages of employees of CBS. CBS was liquidated in bankruptcy in 1987. Many of the clients serviced by Coplin & Associates are former clients of Duane Coplin and CBS.

In September 1987, Internal Revenue Officer Patricia Wilker ("Wilker") was assigned to collect the unpaid assessments against plaintiffs. From September 1987 until January 1989, Wilker attempted unsuccessfully to collect the deficiencies by means of levy and distraint pursuant to Section 6331 of the Code. The majority of her activities were focused toward locating plaintiffs' assets and sources of income. Plaintiffs did not cooperate with Wilker's investigation. Duane Coplin refused to complete a "Collection Information Statement" and in interviews with Wilker he misrepresented his employment status in order to frustrate collection of any salary he might have been receiving. Wilker's investigation revealed that Duane Coplin owns no real property and almost no assets. The house he lives in is rented. He does not draw a regular salary and Coplin & Associates does not withhold taxes from the money it pays him because he works as an independent contractor. Plaintiffs have not filed a federal income tax return since the 1981 tax year.

One avenue of collection which Wilker undertook was to generate a list of persons whose income tax returns were prepared by Duane Coplin or CBS. After she received the list, on January 27, 1989, and again on February 10, 1989, Wilker served notices of levy on 374 persons whose income tax returns were prepared by Duane Coplin or CBS. Wilker testified that her reasoning in sending the notices of levy was that some of the individuals contacted might owe money to plaintiffs which the IRS could levy

pursuant to its lien against plaintiffs' assets. The January 27, 1989, notices of levy sought to collect the individual assets of Duane Coplin, and the February 10, 1989, notices sought to collect the plaintiffs' joint assets. The notices indicated what type of assessments were owing, the amounts owed, and the tax period for which they were owing. This is the same information contained on the notices of levy filed in the Eaton and Ingham County Registers of Deeds. At the time the notices were mailed, the individuals who received notices were not clients of Duane Coplin. However, all the individuals contacted by Wilker were former clients of Duane Coplin or CBS and many of them were current clients of Coplin and Associates.

CONCLUSIONS OF LAW

I. Validity of Liens

Section 6321 of the Internal Revenue Code provides:

> If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

26 U.S.C. § 6321. Section 6303(a) of the Code requires that for an assessment to be valid the government must give notice and a demand for payment to the taxpayer against whom the assessment is made within sixty days of making the assessment. For notice to be accomplished,

the government must either leave notice at the taxpayer's dwelling or usual place of business, or mail notice to the taxpayer's last known address.

Title 28 United States Code Section 2410 waives sovereign immunity and grants subject matter jurisdiction over, inter alia, actions to "quiet title." This section permits a taxpayer to challenge an IRS lien entered against her property. However, the Sixth Circuit has held that the section grants jurisdiction, "only to challenge the procedural regularity of a lien; it may not be used to challenge the underlying tax liability." Pollack v. United States,819 F. 2d 144, 145 (6th Cir. 1987). Plaintiffs challenge the liens registered against them by the IRS on the basis that the government failed to properly notify them of the assessments upon which these liens are based. This argument fails due to the fact that notices of assessment and demands for payment were properly mailed to plaintiffs' last known address within sixty days of the IRS making the various assessments. The liens are valid.

II. Disclosure of Income Tax Return Information

Internal Revenue Code Section 6103 guarantees the confidentiality of income tax return information. It limits the IRS' ability to disclose such information except under certain situations. Section 6103(k)(6) permits IRS officers to disclose return information

> to the extent that such disclosure is necessary in obtaining information, which is not otherwise reasonably available, with respect to the correct determination of tax, liability for tax, or the amount to be collected or with respect to the enforcement of any other provision of this title.

26 U.S.C. 6103 (k)(6). In addition, the regulations promulgated under Section 6103 expressly authorize IRS employees to disclose tax return information

> to locate assets in which the taxpayer has an interest . . . or otherwise to apply the provisions of the Code relating to establishment of liens against such assets, or levy on, or seizure, or sale of, the assets to satisfy any such liability.

26 C.F.R. § 301.6103 (k) (6) –1(b)(6) (1989).

Plaintiffs contend that they are entitled to damages pursuant to Code Section 7431 which allows a taxpayer to collect damages for violations of Section 6103. Section 7431 provides that a taxpayer injured by the wrongful disclosure of return information is entitled to $1,000.00 in damages for each wrongful disclosure. However, the section also provides that, "No liability shall arise under this section with respect to any disclosure which results from a good faith, but erroneous, interpretation of section 6103." 26 U.S.C. § 7431(b). Plaintiffs contend that the notices of levy sent by Patricia Wilker to 374 former clients of Duane Coplin and CBS amounted to wrongful disclosure under Section 6103. They further assert that the IRS is not protected by the "good faith, but erroneous" exception of Section 7431(b) because Patricia Wilker was experienced enough to know that the disclosures were wrongful. Based on Wilker's knowledge of the propriety of disclosures made pursuant to Section 6103, plaintiffs assert she could not have made a good faith mistake.

Plaintiffs' contention that the disclosure made by Wilker was a wrongful disclosure is in error.[1] The language of IRS Regulation 301.6103 (k) (6) –1 (b) (6), quoted

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[1] Because the Court finds that the disclosure of the information does not violate Section 6103(a), it need not reach the government's alternative theory that the "good faith" exception of Section 7431 should apply.

above, applies to precisely this situation. The IRS had established a lien against plaintiffs' assets and Wilker was attempting to levy on those assets to satisfy the plaintiffs' liability when she disclosed the information. The information disclosed by Wilker is substantially the same as the information disclosed on the liens filed in the Eaton and Ingham County Registers of Deeds. It is clear that information disclosed by the establishment of a lien is not wrongfully disclosed information. Maisano v. United States, 908 F.2d 408, 410 (9th Cir. 1990); Flippo v. United States, 670 F. Supp. 638, 641 (W.D.N.C. 1987), aff'd, 849 F. 2d 604 (4th Cir. 1988). Disclosure of the same information in an attempt to satisfy the lien is, likewise, not a wrongful disclosure.

SUMMARY

In accordance with its Findings of Fact and Conclusions of Law, the Court determines that notices and demands for payment of the assessments against plaintiffs Duane and Patricia Coplin were properly mailed to plaintiffs' last known address at the time the assessments were made. The liens filed by the IRS in the Eaton and Ingham County Registers of Deeds are valid liens. Furthermore, the Court concludes that no wrongful disclosure of return information was made by Revenue Officer Wilker. The disclosures she made to the former clients of Duane Coplin and CBS were made in an effort to levy on valid liens attaching to plaintiffs' property and assets. The disclosures were permitted by the Code.

BENJAMIN F. GIBSON
U.S. DISTRICT JUDGE

DATED: January 3, 1991

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DUANE E. COPLIN and
PATRICIA A. COPLIN,
Plaintiffs

v.

UNITED STATES OF
AMERICA,
Defendant.

File No. L89-30027CA

Hon. Benjamin F. Gibson

ORDER

At a sesion of the Court held in and for said District and Division in the city of Grand Rapids, Michigan, this 3rd day of January, 1991.

PRESENT: HON. BENJAMIN F. GIBSON, DISTRICT JUDGE

In accordance with the Opinion dated January 3, 1991, IT IS HEREBY ORDERED that the Court finds in favor of defendant United States of America.

IT IS FURTHER ORDERED that defendant United States of America shall submit a proposed Final Judgment for approval by the Court no later than January 25, 1991.

IT IS SO ORDERED.

BENJAMIN F. GIBSON
U.S. DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DUANE COPLIN and
PATRICIA COPLIN,
Plaintiffs,

Civil Action No.
L89-30027CA

v.

Hon. Benjamin F. Gibson

UNITED STATES OF
AMERICA, and
PATRICIA WILKER,
Defendants.

FINAL JUDGMENT

In accordance with the Court's Order of August 3, 1989, directing that this action be DISMISSED as against defendant Patricia Wilker, and in accordance with the Court's Order and Opinion dated January 3, 1991, entered after a trial on the merits, finding in favor of the defendant United States of America, it is directed that Final Judgment be, and hereby is, entered in favor of defendants Patricia Wilker and United States of America, and against plaintiffs Duane Coplin and Patricia Coplin.

IT IS SO ORDERED this 17th day of January, 1991.

BENJAMIN F. GIBSON
United States District Judge

No. 91-1338

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DUANE COPLIN AND
PATRICIA COPLIN,
Plaintiffs – Appellants,

v.

UNITED STATES OF
AMERICA,
Defendant – Appellee.

ON APPEAL FROM
THE UNITED STATES
DISTRICT COURT
FOR THE WESTERN
DISTRICT OF
MICHIGAN

BEFORE: BOGGS and NORRIS, Circuit Judges; and BERTELSMAN, Chief District Judge.*

PER CURIAM. Taxpayers Duane Coplin and Patricia Coplin sued to have certain government tax liens on their property declared invalid pursuant to 28 U.S.C. §2410. They also sought money damages against the United States and Patricia Wilker for alleged wrongful disclosures of income tax information, pursuant to 26 U.S.C. § 7213 and 7431. After a bench trial, the district court ruled in favor of the United States. We affirm.

I

Duane Coplin("taxpayer")[1] had been in the business of preparing income tax returns as an accountant for over twenty years and is the sole source of support for himself and his wife, Patricia Coplin. Taxpayer currently makes a living by preparing

* The Honorable William O. Bertelsman, Chief United States District Judge for the Eastern District of Kentucky, sitting by designation.

[1] We use "taxpayer" to refer to Duane Coplin with regard to actions involving only him, while the term "taxpayers" refers to the activities of both Duane and Patricia Coplin.

federal income tax returns on behalf of Coplin & Associates. Coplin & Associates, a corporation operated by taxpayer's son, is the successor to Coplin & Baughman, Inc. and Coplin Business Services, Inc. ("CBS"), a defunct corporation that was owned and controlled by taxpayers. Taxpayer testified that he worked as an accountant for Coplin & Associates as a self-employed consultant, not as an employee. Taxpayers have not filed an income tax return since 1981.

At the time taxpayers filed this lawsuit, the Internal Revenue Service ("IRS") had made nine different assessment against one or both of the taxpayers. When the IRS made assessments against the taxpayers, it would mail to the taxpayers at their last known address notices of those assessments and demands of payment. On January 13, 1983; December 28, 1987; April 17, 1989; and September 29, 1989, the IRS filed nine notices of liens against all of the taxpayers' property. These notices listed the taxpayers' name, address, social security number and amount then due for each assessment. Three of the liens were against both taxpayers for unpaid assessments on their joint income tax returns in 1978, 1979, and 1981. Two liens were against taxpayer with respect to assessments made in March 1984 and September 1987 pursuant to 26 U.S.C. § 6672(a), as a "person responsible" for taxes withheld from the wages of the employees of CBS. The IRS also claimed four liens against the taxpayer for return preparer penalties for two assessments made against Coplin in 1983 and two in 1985, pursuant to 26 U.S.C. § 6694.

The IRS had attempted to collect taxes owed by taxpayers for several years, beginning in 1980. These efforts all failed. In September 1987, Internal Revenue Officer Patricia Wilker was assigned to collect the taxpayers'

unpaid taxes. Familiar with the IRS's past efforts with the taxpayers, Wilker tried many different methods including directly asking taxpayers to pay up. The taxpayers refused to provide any information from which Wilker could locate assets or sources of income from which she could collect unpaid taxes. After being unable to locate any property registered in taxpayers' name that had not already been foreclosed upon by a bank and after the taxpayers' continued refusal to cooperate, Wilker filed tax levies pursuant to 26 U.S.C. § 6331.

Upon receiving a final notice of intention to levy, the taxpayers responded by letter that they were not liable to the United States for any taxes. In a subsequent interview between Wilker and Coplin to determine if Coplin was liable as a "responsible person" for taxes withheld from employees of CBS, Coplin first denied he was employed, but then stated that he was self-employed, though he refused to identify his clients for whom he prepared tax returns.

Wilker then asked the Examination Division of the IRS to provide her with a list of persons whose income tax returns were prepared by Coplin, or by CBS before it liquidated in 1987. Wilker served Notices of Levy upon the 374 persons on the list on January 27, 1989 to collect the individual liabilities of the taxpayer and again on February 10, 1989, to collect the joint liabilities of both taxpayers.

On March 22, 1989, taxpayers filed a quiet title action, alleging that the United States had filed a lien against unspecified property and that the lien was invalid because no lawful and proper assessment had been made as required by 26 U.S.C. § 6203. Taxpayers also alleged unlawful disclosure of their income tax returns, in violation of 26 U.S.C. § 6103, and sought to invalidate the lien and

collect money damages pursuant to 26 U.S.C. § 7431.

The district court entered judgment for the United States, holding that the IRS levy notices and demands for payments were properly mailed to taxpayers' last known address and that, therefore, the government liens were valid. The court also held that the disclosures of the taxpayers' income tax returns were made in an attempt to collect taxes owed by the taxpayers and were therefore authorized pursuant to 26 U.S.C. § 6103(k)(6).

II

On appeal, the government argues that the district court lacked jurisdiction to hear the taxpayers' quiet title action. The taxpayers, in Count One of their complaint, asserted a "quiet title" action under § 28 U.S.C. § 2410, challenging the validity of federal tax liens filed against them. Under § 2410, which provides a limited waiver of sovereign immunity, the United States may be named a party in a civil suit "to quiet title to . . . real or personal property on which the United States has or claims a mortgage or other lien." 28 U.S.C. § 2410.

The United States argues that the complaint fails to identify any specific piece of property to which the tax liens were attached and as to which a quiet title action could lie, in violation of the requirements of 28 U.S.C. § 2410. The United States maintains that under § 2410, a quiet title action can not stand without a taxpayer claiming an interest in a special parcel of property and that § 2410 was not designed as a way for taxpayers to make procedural challenges to general tax liens.

However, as the taxpayers point out, the lien filed by the IRS provided that "there is a lien in favor of the

United States on all property and rights to property belonging to this taxpayer . . . " The United States is claiming a lien on everything the taxpayers own and the lien is thus defined in the sense that it applies to the taxpayers' personal and real property. In response, the taxpayers seek to quiet title to everything on which the United States claims a lien, which is everything the taxpayers own. It is somewhat disingenuous and illogical for the government to assert that it can to place a lien on everything the taxpayers own, even when the government is unclear what "everything" entails, while at the same time demanding that the taxpayers can bring a quiet title action only if their defense is more specific than the lien itself. The taxpayers met the "real or personal property" requirements of 28 U.S.C. § 2410 and the district court properly had jurisdiction to hear their quiet title action.

III

Section 6201 of the Internal Revenue Code authorizes the Secretary of the Treasury or his delegate to assess all taxes, including interest, additions to taxes and assessable penalties, imposed by the Internal Revenue Code. 26 U.S.C. §§ 6201, 6301. The Secretary is required to provide notice and make demand for the amount assessed. 26 U.S.C. § 6303. If payment is not made after notice and demand, a lien arises in favor of the United States "upon all property and rights to property, whether real or personal" belonging to the delinquent taxpayer. 26 U.S.C. § 6321. As stated above, § 2410 provides a limited waiver of sovereign immunity where the government has placed a lien on real or personal property. 28 U.S.C. § 2410(a). In that case, a taxpayer can bring an action to challenge the procedural regularity of the imposition of the tax lien. Pollack v. United States, 819 F. 2d 144, 145 (6th Cir. 1987).

"Assessment" is a prescribed procedure for officially recording the amount of a taxpayer's administratively determined tax liability. Rambo v. United States,492 F. 2d 1060, 1061 n.1 (6th Cir. 1974), citing Cohen v. Gross, 316 F. 2d 521, 522 (3rd Cir. 1963). The term "assessment" has a technical meaning spelled out in the Internal Revenue Code and that meaning is binding on the federal courts and the government as well. C & R Investments, Inc. v. United States, 267 F. Supp. 932, 937 (D. Kan. 1967) (citing United States v. Miller, 318 F.2d 637, 638-39 (7th Cir. 1963), rev'd on other grounds, 404 F.2d 314 (10th Cir. 1968). The meaning of the term contemplates the recordation by the Internal Revenue Service of the liability of a taxpayer or the determination of the amount due as tax. Ibid.

The taxpayers claim that the assessments of their tax liability were improperly made. In a quiet title action, the burden of proof rests with the plaintiff. Alexander Hamilton Life Ins. Co. v. Government of Virgin Islands, 757 F. 2d 534, 541 (3rd. Cir. 1985). The government enjoys a presumption of administrative regularity with respect to the acts of its officials. Parkinson v. Commissioner, 647 F. 2d 875, 876 (9th Cir. 1981). In order for taxpayers to overcome this presumption, they must come forward with evidence tending to show that the IRS did not follow a mandated procedure. Then the burden then shifts to the government to prove that its assessment and collection procedures were properly followed. The taxpayers failed to meet their initial burden of proof.

The Internal Revenue Code provides the manner of making an assessment as follows:

> Method of Assessment — the assessment shall be made by recording the liability of the

> taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary. Upon request of the taxpayer, the Secretary shall furnish the taxpayer a copy of the record of assessment.

26 U.S.C. 6203(a). Detailed procedures for making an assessment are provided in Treasury Regulation § 301.6203-1, which states that

> The assessment shall be made by an assessment officer signing the summary record of assessment. The summary record, through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of assessment . . . The date of the assessment is the date the summary record is signed by an assessment officer.

Further procedures for recording assessments state that "[t]he assessment officer signs a form 23-C, Assessment Certificate, and this record, though supporting material, provides identification of the taxpayer by name and number, the taxable period, the nature of the tax and the amount assessed." Internal Revenue Manual 5312 (1) MT5300-1 (11/15/85).

The taxpayers claim that the tax assessments did not meet the procedural requirements stated above. Taxpayers challenge the competency of the certified copies of master tax accounts. The process of making master tax accounts involves the use of computer printouts whereby an assessment officer puts information into the computer, a listing is printed and the assessment officer signs it. The taxpayers claim that this process, in its use of computer printouts, does not meet the procedures

prescribed by the Internal Revenue Code and its implementing regulations. They claim that because the master tax account is a "computer readout . . . [it] only showed that somebody had put the information in the computer."

However, the taxpayers do not provide any evidence or case law to indicate that such an assessment is improper. In fact, an IRS form certifying that taxes and failure-to-pay penalties had been assessed has been held to be "highly probative, and . . . sufficient, in the absence of contrary evidence, to establish that the notices and assessments were properly made. United States v. Zolla, 724 F. 2d 808, 810 (9th Cir. 1983)(emphasis added), cert. denied, 469 U.S. 830 (1984).

Taxpayers argue that computer printouts, in contrast to a form which assessors fill out, can not stand alone because the computer codes that are printed out mean nothing unless interpreted and therefore the testimony of the assessor is essential to know whether or not the assessment was properly made. They argue that such testimony would be inadmissible, as the computer printout does not prove what it purports to show.

However, a computer printout is no more untrustworthy than any other part of the IRS assessment system. Computer codes have uniform meaning and are an integral part of the IRS assessment storage system. Information stored in computers is no more unreliable than information handwritten by an assessor that is legible only to that assessor. It is hard to make a distinction between a document created by transcribing an observation with typewriter or pen and a document created by transcribing an observation on a computer. The assessment merely records liability. The regulations provide that the assessing officer simply sign a summary record, with supporting documents providing the full data. How

the summary record is produced, and how the supplemental documents are kept, is not crucial to the fact of a proper assessment.

Additionally, the computer printout is not the only evidence upon which the government relies. The government has also presented other evidence including certified copies of the taxpayers' master tax account and copies of notices of assessments and certified mail receipts showing that the assessments were properly made and that demands for payment were mailed to taxpayers' last known address in accordance with IRS regulations. All of this evidence indicates that government followed standard procedure in making assessments and that using a computer printout was a legitimate part of this process. The district court did not err in finding that the assessment was proper.

IV

Internal Revenue Code § 6103, in general, prohibits the unauthorized disclosure of federal income tax returns and return information. However, there are express exceptions to this non-disclosure. In particular, § 6103(k)(6) provides:

> an internal revenue officer or employee may, in connection with his official duties relating to any audit, collection activity, or civil or criminal tax investigation or any other offense under the internal revenue laws, disclose return information to the extent that such disclosure is necessary in obtaining information, which is not otherwise reasonably available . . . with respect to the enforcement of any other provision of this title. Such disclosures shall be made only in such situations and under such conditions as the Secretary may prescribe by regulation.

The Secretary, pursuant to § 6103(k)(6), has promulgated regulations prescribing the situations and circumstances in which disclosure may be made. See Treas. Regs. § 301.6103(k)(6)-1(a) and (b).

Under these regulations, an Internal Revenue Officer or employee is authorized to disclose return information of a taxpayer against whom a collection activity is directed in order "to locate assets in which the taxpayer has an interest . . . or otherwise to apply the provisions of the code relating to establishment of liens against such assets, or levy on, or seizure, or sale of, the assets to satisfy any such liability." Treas. Reg. §301.6103(k)(6)-1(b)(6).

However, the code also mandates that such disclosure is allowable only for "obtaining information, which is not otherwise reasonably available." 26 U.S.C. 6103 (k) (6). The regulations state that such disclosure should be made "only . . . if such activities cannot otherwise properly be accomplished without making such disclosure.

Treas. Reg. § 301.6103(k)(6)-1(a). Here, the government had exhausted all other means of obtaining information and nothing else was reasonably available.

We agree with the district court's holding that "it is clear that information disclosed by the establishment of a lien is not wrongfully disclosed information" and that"[d]isclosure of the same information in an attempt to satisfy the lien is, likewise, not a wrongful disclosure." JA at 37-38, citing Maisano v. United States, 908 F. 2d 408, 410 (9th Cir. 1990) and Flippo v. United States, 670 F. Supp. 638, 641 (W.D.N.C. 1987), aff'd, 849 F. 2d 604 (4th Cir. 1988). Such disclosure through levy notices is no violation of taxpayers' non-disclosure rights because the information has already been publicly disclosed in the lien itself.

The taxpayers claim that the case law relied on by the district court only established the validity of disclosure of the lien itself, but did not address the issue of the content that may legitimately be disclosed. They claim that the notice of levy wrongfully disclosed the amount of the taxpayers' outstanding obligation, in violation of 26 U.S.C. 6103(k)(2), which states:

> Disclosure of Amount of Outstanding Lien – If a notice of lien has been filed pursuant to section 6323(f), the amount of the outstanding obligation secured by such lien may be disclosed to any person who furnishes satisfactory written evidence that he has a right in the property subject to such lien or intends to obtain a right in such property.

The taxpayers claim that the notices of levy wrongfully disclosed the amount of their outstanding obligation for everyone to see because they did not require those third parties to show any interest in the property or intent to obtain interest in the property. However, taxpayers cite no case law for their contention that § 6103(k)(2) limits the disclosure authorized by §6103(k)(6). Rather, §6103(k)(2) provides a positive right for a person to request disclosure of the outstanding amount of the taxpayer's obligations secured by a lien if the person has an interest in that property. While § 6103(k)(2) provides an affirmative right, it does not prevent this information from being disclosed otherwise, for example, as authorized under § 6103(k)(6).

Even if the disclosures had violated § 6103, the good faith exception of 26 U.S.C. 7431(b) would preclude liability in this case. Section 7431 (b) provides that no liability shall arise for an unauthorized disclosure of tax return information resulting from a "good faith, but

erroneous, interpretation of section 6103." Thus, as a defendant in an unauthorized disclosure suit, the United States is entitled to immunity unless the agent or employee in question has acted in bad faith. Davidson v. Brady, 732 F. 2d 552, 553 (6th Cir. 1984).

In determining what constitutes bad faith, we apply the objective good faith standard set forth in Harlow v. Fitzgerald, 457 U.S. 800 (1982). See Davidson v. Brady, 732 F. 2d at 553; Rueckert v. Gore, 587 F. Supp. 1238, 1242 (N.D. Ill. 1984), aff'd 775 F. 2d 208 (7th Cir. 1985). Under this standard, a public official acts in good faith if her "conduct [did] not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow, 457 U.S. at 818. A finding of bad faith requires a showing that the government official "took the action with malicious intention to cause" a deprivation of statutory rights. Harlow, 457 U.S. at 815.

While taxpayers correctly point out that the case law only provides good faith exception to liability for government employees and not the government, § 7431(b) stipulates that no liability at all shall lie under its good faith exception. It is a retraction of the waiver of sovereign immunity provided by § 6103. Although the district court did not reach the "good faith" exception theory, we hold that because Wilker reasonably believed she was permitted by § 6103 to disclose the lien information in order to collect delinquent taxes, no liability exists.

We AFFIRM the district court and hold that the issuance of levy notices to potential holders of taxpayers' property did not constitute wrongful disclosure.

No. 91-1338

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DUANE COPLIN; PATRICIA COPLIN
Plaintiffs – Appellants,

v.

UNITED STATES OF AMERICA; PATRICIA WILKER
Defendants – Appellees

BEFORE: BOGGS and NORRIS, Circuit Judges; BERTELSMAN*, District Judge

Upon consideration of the appellants' motion to file a petition for rehearing out of time, and to file an oversized petition,

It is ORDERED that the motion be, and it hereby is , GRANTED.

Furthermore, upon consideration of the petition for rehearing,

It is ORDERED that the petition for rehearing be, and it hereby is, DENIED.

ENTERED BY ORDER OF THE COURT

Leonard Green, Clerk

* The Hon. William O. Bertelsman, U.S. District Court for the Eastern District of Kentucky, sitting by designation.